

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Appellate Jurisdiction)

DATED : 20<sup>th</sup> December, 2021

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**SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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MAC App. No.04 of 2020

**Appellant** : The Branch Manager, New India Assurance Co. Ltd.

**versus**

**Respondents** : Smt. Geeta Khatiwara and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

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**Appearance**

Mr. Sudesh Joshi, Advocate for the Appellant.

Mr. N. Rai, Senior Advocate with Mr. N. T. Sherpa for Respondents-  
Claimants No.1 to 5.

Mr. Umesh Gurung, Advocate for Respondent No.6.

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and

MAC App. No.05 of 2020

**Appellant** : The Branch Manager, New India Assurance Co. Ltd.

**versus**

**Respondents** : Smt. Januka Sharma and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

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**Appearance**

Mr. Sudesh Joshi, Advocate for the Appellant.

Mr. N. Rai, Senior Advocate with Mr. N. T. Sherpa for Respondents-  
Claimants No.1 to 4.

Mr. Umesh Gurung, Advocate for Respondent No.5.

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**J U D G M E N T**

Meenakshi Madan Rai, J.

**1.** These two Appeals (MAC App. No.04 of 2020 and MAC App. No.05 of 2020) are being disposed of by this common Judgment, as they pertain to the same accident.

MAC App. No.04 of 2020

**2(i).** The Learned Motor Accidents Claims Tribunal, North Sikkim, at Mangan, (for short, "Learned Claims Tribunal"), vide the impugned Judgment, dated 23-12-2019, in MACT Case No.05 of 2019, awarded compensation of a sum of Rs.95,17,530/- (Rupees ninety five lakhs, seventeen thousand, five hundred and thirty) only, with interest @ 7.5% per annum, from 07-03-2019, the date of institution of the Claim Petition till full and final payment. The Appellant, Opposite Party No.2, being the Insurance Company Limited, was directed to pay the Award to the Claimants within one month from the date of the impugned Judgment.

MAC App. No.05 of 2020

**(ii)** The Learned Claims Tribunal, North Sikkim, at Mangan, vide the impugned Judgment, dated 23-12-2019, in MACT Case No.04 of 2019, awarded compensation of a sum of Rs.40,80,000/- (Rupees forty lakhs and eighty thousand) only, with interest @ 7.5% per annum, from 07-03-2019, the date of institution of the Claim Petition, till full and final payment. The Appellant, Opposite Party No.2, being the Insurance Company, was directed to pay the Award to the Claimants within one month from the date of the impugned Judgment.

**3.** Aggrieved thereof, Opposite Party No.2/Appellant in both the cases (hereinafter, "the Appellant Company"), are in Appeal before this Court.

**4.** Learned Counsel for the Appellant Company while placing his arguments before this Court contended that the Statutory Insurance Policy of the private vehicle in accident covers

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only third parties and not gratuitous passengers. Third party premium has been paid as per the Policy, but not for gratuitous passengers. Relying on the ratio of the Hon'ble Supreme Court in ***New India Assurance Company Limited vs. Sadanand Mukhi and Others***<sup>1</sup> it was urged that where additional premium has not been paid then the gratuitous passenger cannot be covered. Apart from the statutory requirement, the owner and the insurer can enter into a contract of indemnity by paying extra premium to cover all passengers including gratuitous passengers. However, no extra premium was paid in the instant case as apparent from the Insurance Policy exhibited and relied on by the Respondents-Claimants. As the deceased persons were not being covered by the Policy of Insurance, consequently the Claimants being the wife, three daughters and mother of the deceased in MAC App. No.04 of 2020 and the wife, two sons and father of the deceased in MAC App. No.05 of 2020, are not entitled to compensation erroneously granted by the Learned Claims Tribunal. Reliance was also placed on ***United India Insurance Co. Ltd., Shimla vs. Tilak Singh and Others***<sup>2</sup> where the Hon'ble Supreme court propounded that where the Insurance Policy is a Statutory Policy it will not cover the death of a gratuitous passenger, as in the instant case. For the above reasons, it was urged that the impugned Judgments and Awards of the Learned Claims Tribunal be set aside and the Appeals dismissed.

**5.** Resisting these arguments, Learned Senior Counsel for the Respondents-Claimants in both the cases, submitted that it has

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<sup>1</sup> (2009) 2 SCC 417

<sup>2</sup> (2006) 4 SCC 404

**and**

not been established that the deceased in both the cases were gratuitous passengers as the cross-examination of the Respondents did not elicit evidence as to whether the passengers had paid money to travel in the vehicle. That, the Insurance Policy cannot be stated to be a "Statutory Policy" for the reason that in the second page of Exhibit 19 (MAC App. No.04 of 2020) and Exhibit 18 (MAC App. No.05 of 2020) the words "Package Policy" has not been scored out by the Insurance Company or its agent to specify that it was only an Act Policy. Relying on the ratio in ***Bhagyalakshmi and Others vs. United Insurance Company Limited and Another***<sup>3</sup> it was vehemently urged that the Insurance Policy was indeed a Package Policy. Reliance was also placed on ***Yashpal Luthra and Another vs. United India Insurance Co. Ltd. and Another***<sup>4</sup>; ***Amrit Lal Sood and Another vs. Kaushalya Devi Thapar and Others***<sup>5</sup>; ***National Insurance Co. Ltd. vs. Swaran Singh and Others***<sup>6</sup> and ***Jagtar Singh alias Jagdev Singh vs. Sanjeev Kumar and Others***<sup>7</sup> to buttress the case of the Respondents-Claimants. That, in view of the above submissions the Judgments and Awards of the Learned Claims Tribunal deserves no interference.

**6.** Having heard Learned Counsel for the parties and examined all documents on record as also the impugned Judgments, the question that falls for consideration before this Court is; Whether the Appellant Company is liable to make good the compensation determined by the Learned Claims Tribunal to the victims in the accident?

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<sup>3</sup> (2009) 7 SCC 148

<sup>4</sup> 2011 ACJ 1415 (Delhi) : 2009 SCC OnLine Del 4291

<sup>5</sup> (1998) 3 SCC 744

<sup>6</sup> (2004) 3 SCC 297

<sup>7</sup> (2018) 15 SCC 189

and

**MAC App. No.05 of 2020** : *The Branch Manager, New India Assurance Co. Ltd. vs. Smt. Januka Sharma and Others*

**7(i).** It is imperative to briefly outline the facts of the case before examining the merits thereof. The victims, Late Shiva Kumar Khatiwara, aged about 50 years, a teacher under the Human Resource Development Department, Government of Sikkim, earning a monthly income of Rs.88,865/- (Rupees eighty eight thousand, eight hundred and sixty five) only, in MAC App. No.04 of 2020, and, Late Mani Kumar Khatiwara, aged about 35 years, a farmer-cum-business man, earning a monthly income of Rs.20,000/- (Rupees twenty thousand) only, in MAC App. No.05 of 2020, met with an accident on 23-01-2019, near Gaidhara, Singtam, East Sikkim, while traveling in a private vehicle, Bolero bearing registration No.SK 02 P 2442. They were returning to their respective homes after attending the marriage ceremony of their cousin at Gangtok, East Sikkim. The cause of death was on account of rash and negligent driving of the driver. Pursuant to the accident, Singtam P.S. Case No.9 of 2019, under Sections 279/337/338/ 304A of the Indian Penal Code, 1860, was registered against the errant driver. The facts of the case are not contested by the Appellant Company.

**(ii)** Incongruous as the argument of the Respondents-Claimants appears with regard to the Policy being a Package Policy as already reflected hereinabove, it is expedient at this stage to examine what is a "Package Policy/Comprehensive Policy" and a "Statutory/Act Policy". The Policy in question Exhibit 19 in MAC App. No.04 of 2020 and Exhibit 18 in MAC App. No.05 of 2020 was in respect of a Private Car with validity from 16-12-2018 from 15-10-2019.

**8(i).** Section 147 of the Motor Vehicles Act, 1988 (for short, "M.V. Act, 1988"), deals with requirement of policies and limits of liabilities, which is extracted below for quick reference;

**"147. Requirement of policies and limits of liability.—**(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

- (a) is issued by a person who is an authorised insurer; and
- (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
  - (i) **against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;**
  - (ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.

Provided that a policy shall not be required-

- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—
  - (a) engaged in driving the vehicle, or
  - (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or
  - (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.

and

*Explanation.*—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

**(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—**

- (a) save as provided in clause (b), the amount of liability incurred;**
- (b) in respect of damage to any property of a third party, a limit of rupees six thousand:**

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

**(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”** [emphasis supplied]

**(ii)** A bare reading of the sub-Section (1) of Section 147 of the M. V. Act, 1988, indicates that a Policy of Insurance must be a Policy issued by an authorized insurer and insures the person of

classes of persons specified in the Policy to the extent specified in sub-Section (2) which is a Statutory Policy. The proviso to Section 147 (1) of the M.V. Act, 1988, enumerates the liabilities which are not required to be covered by a Statutory Policy. Sub-Section (2) of Section 147 of the M.V. Act, 1988, directs that subject to the proviso to sub-Section (1) a Statutory Policy shall cover the amount of liability incurred except in respect of damage to any property of a third party for which a limit of Rs.6,000/- (Rupees six thousand) only, is specified. The proviso to sub-Section (2) discloses that any Policy of Insurance issued with any limited liability and in force immediately before the commencement of the new Act shall continue to be effective for a period of four months after such commencement or till the date of expiry of such Policy whichever is earlier.

**9.** That having been said, we may refer to the observations of the Supreme Court in ***National Insurance Company Limited vs. Balakrishnan and Another***<sup>8</sup> wherein the Supreme Court has an occasion to examine the difference between "Act Policy" and "Comprehensive/Package Policy", as below;

**"24.** It is extremely important to note here that till 31-12-2006 the Tariff Advisory Committee and, thereafter, from 1-1-2007 IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies issued by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/package policy". Before the High Court, the competent authority of IRDA had stated that on 2-6-1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider

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<sup>8</sup> (2013) 1 SCC 731



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of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier Circulars dated 18-3-1978 and 2-6-1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of IRDA was also examined before the High Court who stated that the Circulars dated 18-3-1978 and 2-6-1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1-7-2002 and they continue to be operative and binding on the insurance companies. ....

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**26.** In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. ...."

It is thus clear that a Comprehensive/Package Policy would cover the liability of the insurer for payment of compensation for the occupant in a car, in other words, it covers a third party risk of an occupant in a car. An Act Policy however does not cover a third party risk of an occupant in a car. The air is thus clear on this aspect.

**10(i).** Now, we may examine the liability, if any, of an Insurance Company towards a gratuitous passenger. In ***New India***

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**Assurance Company vs. Satpal Singh and Others**<sup>9</sup> the Supreme Court was considering the case of a 10 year old girl who met with her death in a truck accident. Her father, brother and sister sought compensation for her death under the M. V. Act, 1988. The Learned Motor Accidents Claims Tribunal passed an Award for a sum of Rs.25,000/- (Rupees twenty five thousand) only, to the Claimants. The owner of the truck was found liable to pay the compensation amount. The Insurance Company had been directed to pay the compensation as the vehicle was then covered by an Insurance Policy issued by that Company. The Insurance Company appealed against the Judgment and put forth the contention that the deceased was a gratuitous passenger in the truck and hence, no liability could be fastened on the insurer. The Division Bench of the High Court dismissed the Appeal filed by the Insurance Company which was then before the Hon'ble Supreme Court. After considering the matter, the Hon'ble Supreme Court reasoned that the Appellant had banked on the decision in **Mallawwa vs. Oriental Insurance Company Limited**<sup>10</sup> to resist the liability, on the premise that the victim of the accident was a gratuitous passenger in the vehicle covered by the Insurance Policy. The Supreme Court opined that the decision was rendered under Section 95 of the Motor Vehicles Act, 1939. That, as per the proviso to the said Section when read with Clause (ii) it is clear that the Policy of Insurance shall not be required to cover liability in respect of the death of or bodily injury to persons who were gratuitous passengers of that vehicle. The provision of Section 95 of the M.

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<sup>9</sup> (2000) 1 SCC 237

<sup>10</sup> (1999) 1 SCC 403

V. Act, 1939, was compared to Section 147 of the M. V. Act, 1988.

It was concluded as follows;

**"11. The result is that under the new Act an insurance policy covering third-party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-à-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."**

[emphasis supplied]

(ii) While disagreeing with this observation, in *New India Assurance Co. Ltd. vs. Asha Rani and Others*<sup>11</sup> the Hon'ble Supreme Court considered whether under Section 147 of the M. V. Act, 1988, as stood prior to the 1994 amendment, the insurer was liable to pay compensation to the owner of goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury. The Accidents Claims Tribunal as well as the High Court answered the question in the affirmative. The Appellant/Insurer was before the Supreme Court aggrieved thereof and contended that the decision in *Satpal Singh (supra)* was not good law inasmuch as the Court had not taken into consideration the relevant provisions as they then stood nor had it considered the effect and purpose of the 1994 amendment. On the other hand, the Respondent contended that the 1994 amendment was only clarificatory and had not brought about any substantial change and that the Act being a beneficial one, a construction beneficial to the victims of the accident should be followed. Allowing the Appeals of the Insurer, the Supreme Court comprising of a Bench of G. B. Pattanaik, H. K. Sema and S.

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<sup>11</sup> (2003) 2 SCC 223

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B. Sinha, JJ., after discussing the provisions of Section 95 of the Motor Vehicles Act, 1939, Section 147 of the M. V. Act, 1988, prior to its amendment in 1994 and after being amended concluded *inter alia* that the previous Judgment of the Supreme Court in **Satpal Singh** (*supra*) therefore must be held to have been incorrectly decided and the impugned Judgment of the Tribunal as well as that of the High Court were accordingly set aside. It was held that the insurer will not be liable for paying compensation to the owner of the goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury. S. B. Sinha, J., supplementing the decision held that;

**"28.** An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in *New India Assurance Co. v. Satpal Singh* [*New India Assurance Co. v. Satpal Singh*, (2000) 1 SCC 237 : 2000 SCC (Cri) 130] is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid.

**29.** We may consider the matter from another angle. Section 149(2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of sub-section (2) of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in *Satpal Singh case* [*New India Assurance Co. v. Satpal Singh*, (2000) 1 SCC 237 : 2000 SCC (Cri) 130]."

**(iii)** Following this ratio, in *M/s. National Insurance Co. Ltd. vs. Baljit Kaur and Others*<sup>12</sup> the question that arose for consideration

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<sup>12</sup> AIR 2004 SC 1340

in a batch of Appeals therein was whether an Insurance Policy in respect of a goods vehicle would also cover gratuitous passenger in view of the legislative amendment in 1994 to Section 147 of the M. V. Act, 1988. The submission of the Respondent vehicle owner and the driver therein was that the insertion by way of legislative amendment of the words "*including owner of the goods or his authorized representative carried in the vehicle*" under Section 147 would result in the inference that gratuitous passenger are well covered by the scope of the provision. Any other construction would render the effect of the words "*any person*" as completely redundant. The Court observed that, by reason of the 1994 amendment what was added is "*including the owner of the goods or his authorized representative carried in the vehicle*". The liability of the owner of the vehicle was to insure it compulsorily thus by reason of the aforementioned amendment only the owner of his goods or his authorized representative carried in the vehicle besides the third parties were included. The intention of the Parliament, therefore, could not have been that the words "*any person*" occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity for Parliament to carry out an amendment inasmuch as expression "*any person*" contained in sub-Clause (i) of Clause (b) of sub-Section (1) of Section 147 would have included the owner of the goods or his authorized representative besides the passengers who were gratuitous or otherwise. It was concluded as follows;

**"20.** It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons

other than the owner of the goods or his authorized representative remains the same. **Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people."**

[emphasis supplied]

**(iv)** In *Tilak Singh (supra)*, the core issue involved in the Appeal was whether a Statutory Insurance Policy under the M. V. Act, 1988, intended to cover the risk to life or damage to properties of third parties could cover the risk of death or injury to a gratuitous passenger carried in a private vehicle. The Respondent No.5 therein had insured his scooter with the Appellant Insurance Company for the period 07-03-1989 to 06-03-1990. For covering liability to pillion passengers endorsement of IMT 70 pertaining to accident of unnamed hirer/driver/pillion passenger, was required on the Insurance Policy, which was to be obtained by additional premium. The Insurance Policy covering the scooter of Respondent No.5 did not contain an endorsement of IMT 70. The Scooter was sold by Respondent No.5 to Respondent No.1. One Rajinder Singh who riding pillion on 31-10-1989 while being driven by Respondent No.1 died as a result of an accident. On a claim made by the legal heirs of Rajinder Singh, the Tribunal absolved the Appellant Insurance Company from liability on the ground that no notice of the transfer of the insured vehicle had been given to the Appellant Insurance Company in the manner prescribed by the 1939 Act and Respondent No.1 was held liable for payment of the

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compensation. Respondent No.1 appealed. The High Court found that the Insurance Company was jointly and severally liable along with the Appellant for the payment of the compensation determined and awarded. The Insurance Company was before the Supreme Court thereafter. The Supreme Court while considering the law and precedents made a reference to the ratio in **Satpal Singh** (*supra*) wherein it was held that under the new Act an Insurance Policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class and observed that the view expressed in **Satpal Singh** (*supra*) however has been specifically overruled in the subsequent Judgment of a Bench of three Judges in **Asha Rani** (*supra*) wherein it was observed as follows;

**"21.** In our view, although the observations made in *Asha Rani case* [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

**11.** From the above prolix discussions, the difference between "Comprehensive/Package Policy" and "Act Policy" have been set out. It is now no more *res integra* that the insurer will not be liable for paying compensation when a private vehicle meets with an accident and a gratuitous passenger dies as a consequence of the accident. It is clear that additional premium is required to be paid if a liability other than the limited liability provided for under the Act is to be enhanced under an Insurance Policy.

and

**12.** In light of the above observations, it is now to be examined whether Exhibit 19/Exhibit 18 (Insurance Policy) is a Comprehensive Policy or an Act Policy and the deceased persons being gratuitous passengers in the private vehicle would be entitled for compensation. Exhibit 19/Exhibit 18 specifically provides that Policy Schedule cum Certificate of Insurance is a Private Car Liability Policy. In the Schedule of Premium, it is clearly written as “third party cover”. The limits of liability is up to Rs.7,50,000/- (Rupees seven lakhs and fifty thousand) only, no additional premium has been paid for Insurance Policy or other heads as reflected in Exhibit 19/Exhibit 18. The Policy proves *inter alia* as follows;

“ .....

**POLICY SCHEDULE CUM CERTIFICATE OF INSURANCE**  
Private Car Liability Policy

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Schedule of Premium			
Own Damage		Liability	
		Basic TP Cover	
		Compulsory PA cover for Owner Driver (Sum insured ₹ 15,00,000), LL cover for Paid Driver	
OD Premium in ₹		TP Premium in ₹	8690
Net Premium in ₹ :			8690
GST in ₹ :			1564
Total payable in ₹ :			10254
Total payable in ₹ (in words) :			RUPEES TEN THOUSAND TWO HUNDRED FIFTY-FOUR ONLY

Limitations as to use	Limits of Liability	
The policy covers use for any other than: a) Hire or reward b) Organised racing, OR c) Speed testing	Limit of the amount the Company's Liability Under Section II 1(i) in respect of any one accident: as per the Motor Vehicles Act, 1988. Limit of the amount of the Company's Liability Under Section II 1(ii) in respect of any one claim or series of claims arising out of one event: up to ₹ 7,50,000	
	For individual covers (OD) in ₹:	0
	Imposed excess in ₹:	0
	Voluntary excess in ₹:	0
	Compulsory excess in ₹:	NA
Persons or classes of persons entitled to driver		
Any person including the insured provided that a person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license. Provided also that the person Holding an effective Learner's License may also drive the vehicle and that such a person satisfies the requirement of Rule 3 of the Central Motor Vehicles rules, 1988		



and

PA cover for Owner Driver

Name of Nominee	Age of Nominee	Relationship with the insured	Name of the Appointee (if Nominee is a minor)	Relationship to the Nominee
NA	NA	NA	NA	NA

PA cover for named persons

Name	CSI Opted (₹)	Nominee	Relationship
None	0	NA	NA

Premium and GST Details

	Rate of Tax	Amount in INR
Premium		₹ 8690.00
SGST	9	782
CGST	9	782
IGST	0	0

In witness where of this policy has been signed at GANGTOK BR on this 13/12/2018  
WARRANTED THAT IN CASE OF DISHONOUR OF THE PREMIUM CHEQUE, THIS DOCUMENT STANDS AUTOMATICALLY CANCELLED ABINITIO  
This policy is subject to the Terms, conditions and exceptions applicable to **Package/Liability policy** attached/available on the web site  
<http://newindia.co.in> : IMT Endorsement Number(s) printed herewith attached 22

Important notice

This insured is not indemnified, if the vehicle is used or driven otherwise than in accordance with this schedule. Any payment made by the company by reason of wider terms appearing in the certificate in order to comply with the Motor Vehicles Act, 1988 is recoverable from the insured: see clause headed "AVOIDANCE OF CERTAIN TERMS AND RIGHTS OF RECOVERY". It is clarified that in case the declaration regarding the ncb or other previous policy details made by the insured, is found to be incorrect, all the benefits (including claim) under section-1 of this policy, will stand forfeited.

....." [emphasis supplied]

**13.** The only argument of Learned Senior Counsel for the Respondents-Claimants was that the Appellant Company had not struck out the words "Package Policy". This arguments holds no water, as it is a human error and the document otherwise speaks for itself, inasmuch as no additional premium has been paid to cover a gratuitous passenger, nor has Learned Counsel for the Respondents-Claimants been able to establish that any additional premium was paid towards this end. In the said circumstances, it need not be reiterated that the liability of the Insurance Company would be confined to that reflected in the Insurance Policy. The Learned Claims Tribunal was thus in error in granting the compensation.

**and**

**14.** Consequently, the impugned Judgments and Awards of the Learned Claims Tribunal are set aside.

**15.** Appeals disposed of accordingly.

**16.** No order as to costs.

**17.** Copy of this Judgment be sent to the Learned Claims Tribunal for information.

**( Meenakshi Madan Rai )**

**Judge**

20-12-2021

Approved for reporting : **Yes**